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COMMUNICATION FROM THE
CLERK OF THE HOUSE

The SPEAKER pro tempore laid before the House the following communication from the Clerk of the House of Representatives:

OFFICE OF THE CLERK,
HOUSE OF REPRESENTATIVES,
Washington, DC, April 15, 2021.

Hon. NANCY PELOSI,
The Speaker, House of Representatives,
Washington, DC.

DEAR MADAM SPEAKER: Pursuant to the permission granted in Clause 2(h) of Rule II of the Rules of the U.S. House of Representatives, the Clerk received the following message from the Secretary of the Senate on April 15, 2021, at 11:28 a.m.:

That the Senate passed S. 400.

With best wishes, I am,

Sincerely,

CHERYL L. JOHNSON,
Clerk.

PAYCHECK FAIRNESS ACT

Mr. SCOTT of Virginia. Mr. Speaker, pursuant to House Resolution 303, I call up the bill (H.R. 7) to amend the Fair Labor Standards Act of 1938 to provide more effective remedies to victims of discrimination in the payment of wages on the basis of sex, and for other purposes, and ask for its immediate consideration.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Pursuant to House Resolution 303, the amendment in the nature of a substitute recommended by the Committee on Education and Labor printed in the bill, modified by the amendment printed in part A of House Report 117-15, is adopted and the bill, as amended, is considered read.

The text of the bill, as amended, is as follows:

H.R. 7

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Paycheck Fairness Act”.

SEC. 2. ENHANCED ENFORCEMENT OF EQUAL PAY REQUIREMENTS.

(a) DEFINITIONS.—Section 3 of the Fair Labor Standards Act of 1938 (29 U.S.C. 203) is amended by adding at the end the following:

“(z) ‘Sex’ includes—

“(1) pregnancy, childbirth, or a related medical condition;

“(2) sexual orientation or gender identity; and

“(3) sex characteristics, including intersex traits.

“(aa) ‘Sexual orientation’ includes homosexuality, heterosexuality, and bisexuality.

“(bb) ‘Gender identity’ means the gender-related identity, appearance, mannerisms, or other gender-related characteristics of an individual, regardless of the individual’s designated sex at birth.”.

(b) BONA FIDE FACTOR DEFENSE AND MODIFICATION OF SAME ESTABLISHMENT REQUIREMENT.—Section 6(d)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)(1)) is amended—

(1) by striking “No employer having” and inserting “(A) No employer having”;

(2) by striking “the opposite” and inserting “another”;

(3) by striking “any other factor other than sex” and inserting “a bona fide factor other than sex, such as education, training, or experience”; and

(4) by inserting at the end the following:

“(B) The bona fide factor defense described in subparagraph (A)(iv) shall apply only if the employer demonstrates that such factor (i) is not based upon or derived from a sex-based differential in compensation; (ii) is job-related with respect to the position in question; (iii) is consistent with business necessity; and (iv) accounts for the entire differential in compensation at issue. Such defense shall not apply where the employee demonstrates that an alternative employment practice exists that would serve the same business purpose without producing such differential and that the employer has refused to adopt such alternative practice.

“(C) For purposes of subparagraph (A), employees shall be deemed to work in the same establishment if the employees work for the same employer at workplaces located in the same county or similar political subdivision of a State. The preceding sentence shall not be construed as limiting broader applications of the term ‘establishment’ consistent with rules prescribed or guidance issued by the Equal Employment Opportunity Commission.”.

(c) NONRETALIATION PROVISION.—Section 15 of the Fair Labor Standards Act of 1938 (29 U.S.C. 215) is amended—

(1) in subsection (a)—

(A) in paragraph (3), by striking “employee has filed” and all that follows and inserting “employee—

“(A) has made a charge or filed any complaint or instituted or caused to be instituted any investigation, proceeding, hearing, or action under or related to this Act, including an investigation conducted by the employer, or has testified or is planning to testify or has assisted or participated in any manner in any such investigation, proceeding, hearing or action, or has served or is planning to serve on an industry committee;

“(B) has opposed any practice made unlawful by this Act; or

“(C) has inquired about, discussed, or disclosed the wages of the employee or another employee (such as by inquiring or discussing with the employer why the wages of the employee are set at a certain rate or salary).”;

(B) in paragraph (5), by striking the period at the end and inserting “; or”; and

(C) by adding at the end the following:

“(6) to require an employee to sign a contract or waiver that would prohibit the employee from disclosing information about the employee’s wages.”; and

(2) by adding at the end the following:

“(c) Subsection (a)(3)(C) shall not apply to instances in which an employee who has access to the wage information of other employees as a part of such employee’s essential job functions discloses the wages of such other employees to individuals who do not otherwise have access to such information, unless such disclosure is in response to a complaint or charge or in furtherance of an investigation, proceeding, hearing, or action under section 6(d), including an investigation conducted by the employer. Nothing in this subsection shall be construed to limit the rights of an employee provided under any other provision of law.”.

(d) ENHANCED PENALTIES.—Section 16(b) of the Fair Labor Standards Act of 1938 (29 U.S.C. 216(b)) is amended—

(1) by inserting after the first sentence the following: “Any employer who violates section 6(d), or who violates the provisions of section 15(a)(3) in relation to section 6(d), shall additionally be liable for such compensatory damages, or, where the employee demonstrates that the employer acted with malice or reckless indifference, punitive damages as may be appropriate, except that the United States shall not be liable for punitive damages.”;

(2) in the sentence beginning “An action to”, by striking “the preceding sentences” and inserting “any of the preceding sentences of this subsection”;

(3) in the sentence beginning “No employees shall”, by striking “No employees” and inserting “Except with respect to class actions brought to enforce section 6(d), no employee”;

(4) by inserting after the sentence referred to in paragraph (3), the following: “Notwithstanding any other provision of Federal law, any action brought to enforce section 6(d) may be maintained as a class action as provided by the Federal Rules of Civil Procedure.”; and

(5) in the sentence beginning “The court in”—

(A) by striking “in such action” and inserting “in any action brought to recover the liability prescribed in any of the preceding sentences of this subsection”; and

(B) by inserting before the period the following: “, including expert fees”.

(e) ACTION BY THE SECRETARY.—Section 16(c) of the Fair Labor Standards Act of 1938 (29 U.S.C. 216(c)) is amended—

(1) in the first sentence—

(A) by inserting “or, in the case of a violation of section 6(d), additional compensatory or punitive damages, as described in subsection (b),” before “and the agreement”; and

(B) by inserting before the period the following: “, or such compensatory or punitive damages, as appropriate”;

(2) in the second sentence, by inserting before the period the following: “and, in the case of a violation of section 6(d), additional compensatory or punitive damages, as described in subsection (b)”;

(3) in the third sentence, by striking “the first sentence” and inserting “the first or second sentence”.

(f) ENFORCEMENT AUTHORITY.—

(1) IN GENERAL.—The Equal Opportunity Employment Commission shall carry out the functions and authorities described in section 1 of Reorganization Plan No. 1 of 1978 (92 Stat. 3781; 5 U.S.C. App.) to enforce and administer the provisions of section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)), except that the Secretary of Labor, through the Office of Federal Contract Compliance Programs, may also enforce this provision with respect to Federal contractors, Federal subcontractors, and federally-assisted construction contractors, within the jurisdiction of the Office of Federal Contract Compliance Programs under Executive Order 11246 (42 U.S.C. 2000e note; relating to equal employment opportunity) or a successor Executive Order.

(2) COORDINATION.—The Equal Opportunity Employment Commission shall issue such regulations as may be necessary to explain and implement the standards of such section 6(d). The Secretary of Labor may issue regulations to govern procedures for enforcement of section 6(d) by the Office of Federal Contract Compliance Programs. The Secretary of Labor and the Equal Employment Opportunity Commission shall establish other coordinating mechanisms as may be necessary.

SEC. 3. TRAINING.

The Equal Employment Opportunity Commission and the Secretary of Labor, acting through the Office of Federal Contract Compliance Programs, subject to the availability of funds appropriated under section 11, shall provide training to employees of the Commission and the Office of Federal Contract Compliance Programs and to affected individuals and entities on matters involving discrimination in the payment of wages.

SEC. 4. NEGOTIATION SKILLS TRAINING.

(a) PROGRAM AUTHORIZED.—

(1) IN GENERAL.—The Secretary of Labor, after consultation with the Secretary of Education, is authorized to establish and carry out a grant program.